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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,297	07/01/2003	Jesse Allen Curran	9D-DW-19448	2555
<div>7590 John S. Beulick Armstrong Teasdale LLP Suite 2600 One Metropolitan Square St. Louis, MN 63102</div>			<div>EXAMINER PATEL, RITA RAMESH</div> <div>ART UNIT 1746</div> <div>PAPER NUMBER</div>	
03/01/2007				
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	03/01/2007	PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No. 10/611,297	Applicant(s) CURRAN, JESSE ALLEN	
	Examiner Rita R. Patel	Art Unit 1746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION:

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 December 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION*****Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/14/06 has been entered.

***Response to Applicant's Amendment***

In the amendment filed on 10/16/06 claims 1, 3, 9, 10, 13, and 17 have been amended. Applicant's arguments have been considered, but are not persuasive; see remarks in response to applicant's arguments in the Advisory Action filed 11/8/06. Thus, claims 1-20 are rejected for the reasons of record.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sloane (US Patent No. 2,529,267).

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Sloane discloses a collapsible container C which can easily be set up and collapsed, comprising identical side walls, each consisting of horizontal/longitudinal rods 1 and vertical rods 2 (col. 1, lines 9-12; col. 2, lines 1-3). The walls form a rectangular shaped structure, as seen in Figure 1 of Sloane, wherein the structure of the container is made-up of horizontal and longitudinal rods which form mesh-like walls pervious to liquid flow therein. In Figure 2, the bottom part of the vertical wall on the right-hand side of the drawing (projecting front wall slide portion) is engaged with a latch frame 7 of the bottom wall (side wall front slot end) and disengaged from a bottom part of the vertical wall on the left-hand side (side wall back slot end), and opposite of the right-hand side wall, when in an open position. When the basket is collapsed/closed position the latch frame 7 of the bottom wall allows the bottom wall to fall downwards from its engaged position and said front and side walls are collapsible onto each other. Sloane's teaching reads on applicant's invention wherein the basket is positionable between a first size and second size, the first size securing small items therein while the second size is smaller than the first and does not secure small items therein; Sloane's disclosure of the expanded container reads on the first size; Sloane's disclosure of the collapsed container reads on the second size. Sloane's continuous longitudinal slots are also engageably connected with a projecting slide portion of a front wall, the loops 1a pivot about a side wall, and transform the basket from a first size to a small second size. Additionally, Sloane discloses a lateral leg 6 located above the top horizontal and lateral leg of the respective edge-frame 3, thus providing a hand-hold HH (col. 2, lines 30-33), which may read on applicant's claim of a projection positioned on said basket for engageable transformation of said basket from said first size to said second size. In

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Figure 1, it can be seen that leg 6 is located on both side walls of the container; which reads on applicant's claim wherein the projection is mounted to at least one of said lateral walls.

Although Sloane's invention has not been disclosed for intended use in a dishwasher, Sloane's collapsible container is intended for use in holding items therein; arguably it may be used to hold items to be washed within a dishwasher. Sloane's invention is structurally capable of performing applicant's claimed use of for retaining items to be washed therein. It is well settled that the intended use of a claimed apparatus is not germane to the issue of the patentability of the claimed structure. If the prior art structure is capable of performing the claimed use then it meets the claim. *In re Casey*, 152 USPQ 235, 238 (CCPA 1967); *In re Otto*, 136 USPA 459 (CPA 1963).

Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sloane further in view of McConnell (US Patent No. 4,732,291).

Sloane illustrates in Figure 1 said container C has a bottom wall, whereby the lateral walls are pivotally attached thereon by pivot loops 1a which are turnably engaged by the vertical legs of the edge-frame 3 (col. 2, lines 35-37). However, Sloane fails to teach a lid for said container C. McConnell teaches a pivotally attached lid within an assembly for storing baby bottle parts for cleansing in a dishwasher wherein the assembly has an upper lid 13 which may be hinged to the periphery 31 by means of hinges 33 and 35. It would be obvious to one of ordinary skill in the art at the time of the invention to use a pivotally attached lid in Sloane to aid in further containing items held

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therein, as shown by McConnell, with expectation of providing desired enclosure of said apparatus used for holding items to be washed therein.

In Figure 1, Sloane illustrates the container C which reads on applicant's claims whereby the first size is configured such that said bottom wall is oriented substantially horizontally and each said lateral wall is oriented vertically. In Figure 2 Sloane illustrates the container C being collapsed which reads on applicant's claims whereby said bottom wall, said lateral walls and said lid is oriented substantially vertically; upon collapsing said container C, the top, bottom and lateral walls of the apparatus are in a vertical plane.

Claims 6, 7 and 9-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sloane and McConnell as applied to claims above, and further in view of Insalaco (US Patent No. 4,834,125).

Sloane and McConnell teach apparatuses used for holding objects to be washed therein, however, Sloane and McConnell fail to teach the material composition of said apparatus to be polypropylene and they also fail to teach the holding apparatus to have a connector to attach it to the rack of a dishwasher. However, Insalaco teaches a front loading dishwasher having a cabinet with an opening in its front side and a washing chamber interiorly disposed within the cabinet which includes a removable utensil basket 10 for a dishwasher which includes a pair of downwardly directed, spaced apart, integrally molded hooks 28 to securely, but removably, mount the basket 10 to a front portion 30 of the upper dish rack 12, wherein the utensil basket is preferably formed from polypropylene (Abstract; col. 3, lines 52-57). It would be obvious to one of ordinary

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skill in the art at the time of the invention to incorporate such teachings of Insalaco with Sloan and McConnell, to achieve a rigid but flexible structure, that is durable, and provide convenient and secure assembly of the basket within the rack of the dishwasher.

Applicant claims a knob positioned on at least one of said longitudinal walls, however the aforementioned hand hold handle 6 taught by Sloan reads on applicant's claim for a knob. Although Sloan does not call said handle a knob, it is capable of performing the same function as a knob by providing the user with a grip to hold for expanding and collapsing said apparatus, therefore the handle of Sloan reads on the knob claimed by the applicant. It is well settled that the intended use of a claimed apparatus is not germane to the issue of the patentability of the claimed structure. If the prior art structure is capable of performing the claimed use then it meets the claim. *In re Casey*, 152 USPQ 235, 238 (CCPA 1967); *In re Otto*, 136 USPA 459 (CPA 1963).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. G. Einhorn (US Patent No. 2,524,900) teaches a collapsible wire basket with handle on the sides.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rita R. Patel whose telephone number is (571) 272-8701. The examiner can normally be reached on M-F: 8-5.

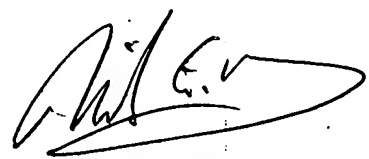
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on (571) 272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



rrp



**MICHAEL BARR**  
SUPERVISORY PATENT EXAMINER